

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1576 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos.1 to 5 - No.

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JASHUMATIBEN RAJUBHAI CHAUHAN

Versus

RAJUBHAI DAHYABHAI CHAUHAN

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Appearance:

MR AG MOMIN for Petitioner

MRS KETTY A MEHTA for Respondent No. 1

MR.KC SHAH,ADDL. PUBLIC PROSECUTOR for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/01/97

ORAL JUDGEMENT

The petitioner herein filed Cri.Misc.Application No.112/87 under section 125 of the Criminal Procedure Code before the learned Metropolitan Magistrate, Ahmedabad. She claimed that she was being ill-treated by her husband, respondent No.1 herein and she was driven out of her matrimonial home. She, therefore, demanded a monthly maintenance of Rs.400/- and Rs.200/- for herself

and the minor daughter respectively. She also claimed that the petitioner was serving under the State Government and also had a Poultry Farm at Nadiad and was earning around Rs.12,000/- from the said farm. The learned Magistrate under his judgment and order dated 28-2-90 held that the petitioner was entitled to maintain respondent No.1 and awarded a monthly maintenance of Rs.250/- and Rs.125/- to the petitioner and the minor daughter respectively.

Feeling aggrieved, the petitioner preferred Criminal Revision Application No.93/90 before the learned Additional Sessions Judge, Ahmedabad, which was dismissed by him under his judgment and order dated 9th August 1990. Feeling aggrieved, the petitioner has preferred the present Spl.Cri.Application under Article 227 of the Constitution. Learned Advocate Mr.Bukhari has appeared for the petitioner and has claimed that the petitioner was earning a salary of more than Rs.1600/- from the State Government and he was earning around Rs.12,000/-annually from his Poultry Farm. Considering his income, the maintenance awarded to the petitioner and the minor daughter was insufficient and requires to be enhanced as claimed by the petitioner. The learned Magistrate has considered the evidence regarding the earnings of the respondent No.1. He has found that the respondent No.1 was earning a monthly salary of Rs.1500/-. However, the fact of his owning a Poultry farm and earning any income therefrom was not proved. The learned Magistrate awarded a monthly maintenance of Rs.375/- to the petitioner and her minor daughter. The learned Sessions Judge also has considered the evidence in this regard. He too has held that the respondent No.1's owning a Poultry farm or his earning any income therefrom was not established. However, he considered the monthly salary of the respondent No.1 to be Rs.1670/-. It was further found that the respondent No.1 was required to maintain his parents as well as his grand parents. Thus, considering the family, liability of the respondent No.1 and his monthly income, the learned Additional Sessions Judge has held that the monthly maintenance awarded to the petitioner and her minor daughter was proportionate to the income earned by the respondent No.1.

Learned Advocate Mr.Bukhari has not been able to refute the findings recorded by the courts below that the respondent No.1 had no income from the Poultry farm as averred by the petitioner. He has not been able to refute that the respondent No.1 had to maintain his

parents and his grand parents as found by the learned Additional Sessions Judge. In that view of the matter, the amount of maintenance awarded to the petitioner and the minor daughter cannot be said to be meager or disproportionately low. Mr.Bukhari has also contended that the grand parents of the respondent No.1 may not be alive and that there must have been a substantial increase in the salary of the respondent No.1. If such are the developments, the petitioners have a remedy for claiming enhancement of maintenance under section 127 of the Criminal Procedure Code. In that view of the matter also, the maintenance awarded by the courts below cannot be interfered with.

Petition is, therefore, dismissed. Rule is discharged.

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